

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIMBERLY TAYLOR,

Plaintiff,

v.

AQUARION ASSET MANAGEMENT,  
LLC,

Defendant.

Case No. 2:24-cv-0346-JAM-JDP

FINDINGS AND RECOMMENDATIONS

Plaintiff Kimberly Taylor filed this action against Aquarion Asset Management, LLC, alleging violations of the Fair Debt Collection Practices Act (“FDCPA”) and the California Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”). Defendant has neither answered the complaint nor otherwise appeared. Plaintiff now moves for default judgment. ECF No. 8. I recommend that plaintiff’s motion be granted.

**Background**

Plaintiff alleges that in mid-2023, defendant, a third-party debt collector, began calling her cell phone in an attempt to collect a debt. ECF No. 1 at 3. She alleges that defendant harassed her with repeated phone calls from then until at least January 2024, when this complaint was filed. *Id.* at 3-4. These calls persisted despite plaintiff’s multiple requests for defendant to cease communication with her via telephone and to provide a debt verification letter. *Id.*

1 Plaintiff filed a proof of service showing that on February 23, 2024, a process server  
 2 served Cloud Peak Law, LLC, defendant's registered agent, with a copy of the summons and  
 3 complaint.<sup>1</sup> ECF No. 5 *see* Fed. R. Civ. P. 4(e)(2)(c). After defendant failed to timely respond to  
 4 the complaint, plaintiff requested entry of its default, ECF No. 6, which the Clerk of Court  
 5 entered on March 13, 2024. ECF No. 7. Plaintiff now moves for default judgment against  
 6 defendant. ECF No. 8.

### 7 Legal Standard

8 Under Federal Rule of Civil Procedure 55, default may be entered against a party who  
 9 fails to plead or otherwise defend against an action. *See* Fed. R. Civ. P. 55(a). However, "[a]  
 10 defendant's default does not automatically entitle the plaintiff to a court-ordered judgment."  
 11 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing *Draper v.*  
 12 *Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986)). Rather, the decision to grant or deny a motion  
 13 for default judgment is discretionary. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In  
 14 exercising that discretion, the court considers the following factors:

15 (1) the possibility of prejudice to the plaintiff, (2) the merits of  
 16 plaintiff's substantive claim, (3) the sufficiency of the complaint,  
 17 (4) the sum of money at stake in the action, (5) the possibility of a  
 18 dispute concerning the material facts, (6) whether the default was  
 due to excusable neglect, and (7) the strong policy underlying the  
 Federal Rules of Civil Procedure favoring decisions on the merits.

19 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "In applying this discretionary  
 20 standard, default judgments are more often granted than denied." *Philip Morris USA, Inc. v.*  
 21 *Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003) (quoting *PepsiCo, Inc. v. Triunfo-*  
 22 *Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999)).

23 Generally, once default is entered "the factual allegations of the complaint, except those  
 24 relating to the amount of damages, will be taken as true." *TeleVideo Sys., Inc. v. Heidenthal*, 826

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25  
 26 <sup>1</sup> A record search of the Wyoming Secretary of State's website shows that Cloud Peak  
 27 Law, LLC, is a registered agent for defendant. The court takes judicial notice of the entity profile  
 28 from the Wyoming Secretary of State's website. Fed. R. Evid. 201; *see Gerritsen v. Warner*  
*Bros. Entm't, Inc.*, 112 F. Supp. 3d 1011, 1033-34 (C.D. Cal. 2015) (taking judicial notice of  
 business entity profile from the California Secretary of State's website).

1 F.2d 915, 917-18 (9th Cir. 1987) (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th  
 2 Cir. 1977)). However, “necessary facts not contained in the pleadings, and claims which are  
 3 legally insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d  
 4 1261, 1267 (9th Cir. 1992).

### 5 Discussion

#### 6 A. Appropriateness of the Entry of Default Judgment Under the *Eitel* Factors

7 The merits of plaintiff’s substantive claims and the sufficiency of the complaint—factors  
 8 two and three—weigh in favor of granting default judgment. These factors are “discussed  
 9 together because of the relatedness of the two inquiries.” *Allmendinger v. Oxford L, LLC*, No.  
 10 2:14-cv-1990-KJM-EFB (TEMP), 2016 WL 146230, \*2 (E.D. Cal. Jan. 13, 2016). The court  
 11 must consider whether the allegations in the complaint are sufficient to state a claim that supports  
 12 the relief sought. *See Cal. Sec. Cans*, 238 F. Supp. 2d at 1175.

13 To state a claim under the FDCPA, plaintiff must demonstrate that: (1) she is a  
 14 “consumer,” as defined by 15 U.S.C. § 1692a(3); (2) the debt arises out of a transaction entered  
 15 into for personal purposes; (3) the defendant is a “debt collector,” as defined by 15 U.S.C.  
 16 § 1692a(6); and (4) the defendant violated one of the provisions under 15 U.S.C. §§ 1692a-1692o.  
 17 *Allmendinger*, 2016 WL 146230 at \*2 (citing *Alonso v. Blackstone Financial Group LLC*, 962 F.  
 18 Supp. 2d 118, 1193-94 (E.D. Cal. 2013)). California’s Rosenthal Act incorporates provisions of  
 19 the FDCPA by reference, so a violation the FDCPA constitutes a violation of the Rosenthal Act.  
 20 Cal. Civ. Code § 1788.17; *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir. 2012) (“The  
 21 Rosenthal Act mimics or incorporates by reference the FDCPA’s requirements . . . and makes  
 22 available the FDCPA’s remedies for violations.”).

23 Plaintiff alleges that she is a “consumer” and defendant is a “debt collector” as those terms  
 24 are defined by the FDCPA. ECF No. 1 at 2-3. She alleges that defendant repeatedly called her in  
 25 an effort to collect a credit card debt, which plaintiff incurred by purchasing “various personal  
 26 goods.” ECF No. 1 at 3. These allegations are sufficient to satisfy the first three elements.

27 Plaintiff also sufficiently alleges defendant’s violation of FDCPA section 1692d(5), which  
 28 prohibits a debt collector from calling a consumer “repeatedly or continuously with intent to

1 annoy, abuse, or harass any person at the called number.” Plaintiff alleges that, despite her  
 2 repeated requests that it cease such conduct, defendant persisted calling her for months one end  
 3 “in an effort to harass and annoy Plaintiff into addressing the subject consumer debt.” ECF No. 1  
 4 at 3-4. She further alleges that defendant was obligated under 12 C.F.R. § 1006.14(h)(1) to cease  
 5 calling her upon request, and defendant’s refusal to do so evinces its harassing intent.<sup>2</sup> ECF No. 1  
 6 at 7. These allegations sufficiently demonstrate violations of the FDCPA and, by extension,  
 7 California’s Rosenthal Act. *See* 15 U.S.C. § 1692d(5); Cal. Civ. Code § 1788.17; *Arteaga v.*  
 8 *Asset Acceptance, LLC*, 733 F. Supp. 2d 1218, 1227 (E.D. Cal. 2010) (“[A] debt collector may  
 9 harass a debtor by continuing to call the debtor after the debtor has requested that the debt  
 10 collector cease and desist communication.”). Accordingly, the second and third *Eitel* factors  
 11 weigh in favor of default judgment.

12 The remaining *Eitel* factors also weigh in favor of granting plaintiff’s motion. Defendant  
 13 was properly served, *see* ECF No. 5, but has not responded. Thus, it appears that defendant’s  
 14 default was not due to excusable neglect. Plaintiff seeks statutory damages, and, accepting  
 15 plaintiff’s allegations as true, there is little possibility of a dispute concerning material facts. *See*  
 16 *Elektra Entm’t Grp. Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005) (“Because all  
 17 allegations in a well-pleaded complaint are taken as true after the court clerk enters default  
 18 judgment, there is no likelihood that any genuine issue of material fact exists.”). Additionally,  
 19 because defendant has not appeared in this action, plaintiff has no way to obtain relief absent  
 20 default judgment. Finally, although decisions on the merits are favored, such a decision is  
 21 impossible where the defendant declines to take part. *See Penpower Tech. Ltd. v. S.P.C. Tech.*,  
 22 627 F. Supp. 2d 1083, 1093 (N.D. Cal. 2008). Accordingly, plaintiff is entitled to default  
 23 judgment on its claims.

#### 24 B. Requested Relief

25 Plaintiff request that she be granted statutory damages, costs, and attorney’s fees. ECF

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26 <sup>2</sup> 12 C.F.R. § 1006.14(h)(1) provides that “in connection with the collection of any debt, a  
 27 debt collector must not communicate or attempt to communicate with a person through a medium  
 28 of communication if the person has requested that the debt collector not use that medium to  
 communicate with the person.”

No. 8-2 at 2.

1. Damages

Both the FDCPA and the Rosenthal Act allow a prevailing plaintiff to recover up to \$1,000 in statutory damages. 15 U.S.C. § 1692k(a)(2)(A); Cal. Civ. Code § 1788.30(b). Plaintiff may recover statutory damages under both acts. *Gonzalez v. Arrow Financial Services, LLC*, 660 F.3d 1055, 1069 (9th Cir. 2011) (“The Rosenthal Act’s remedies are cumulative, and available even when the FDCPA affords relief.”).

As discussed above, plaintiff’s allegations, which must be accepted as true, demonstrate that defendant violated the FDCPA and the Rosenthal Act. Defendant ignored plaintiff’s repeated requests to cease calling her cellular, which reflects a disregard for the FDCPA’s prohibition against harassing and abusive debt collection practices. ECF No. 1 at 7; *see* 12 C.F.R. § 1006.14(a). Accordingly, I find that awarding the maximum statutory damages is appropriate. *See Garcia v. Armin, O’Conner & Boch, LLC*, No. EDCV 19-1882 JGB (SHKx), 2020 WL 13303718 at \*6 (C.D. Cal. Dec. 3, 2020) (granting maximum statutory damages where plaintiff sufficiently alleged violations of the FDCPA and California’s Rosenthal Act but did not seek actual damages).

2. Costs and Attorney’s Fees

Plaintiff also seeks \$2,575 in attorney’s fees pursuant, plus an additional \$534.65 in costs—\$405 for the filing fee and \$129.65 for service and mailing—pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civ. Code § 1788.30(c). ECF No. 8-1. The requested attorney’s fees are based on 6.1 hours of work performed by attorney Alexander Taylor at a \$375 hourly rate, and 2.3 hours of work by non-attorney staff at \$125 per hour. *Id.*

The court’s local rules require a party seeking attorney’s fees to submit an affidavit addressing specific criteria that the court will consider in determining whether an award of attorney’s fees is appropriate. *See* E.D. Cal. L. R. 293(b), (c). The local rules also provide that a bill of costs must be served on all other parties within fourteen days after an entry of judgment, and the “cost bill shall itemize the costs claimed and shall be supported by a memorandum of costs and an affidavit of council . . . .” E.D. Cal. L. R. 292(b).

1 Plaintiff's counsel submitted a declaration in support of the request for attorney's fees, but  
2 it does not address all criteria listed in Local Rule 293. Additionally, plaintiff's motion contains  
3 insufficient information to determine whether the requested hourly rate and the number of hours  
4 spent litigating were reasonable. Plaintiff's counsel states that his hourly rate is "reasonable for  
5 an attorney with similar experience," but he provides no information about his experience or the  
6 typical rate charged by an attorney with similar experience in the jurisdiction. ECF No. 8-2 at 2.  
7 Plaintiff also appears to seek fees for clerical tasks, including filing documents with the court, that  
8 were performed by a paralegal. ECF No. 8-1 at 1-2. Fees associated with such clerical tasks are  
9 generally "considered overhead expenses overhead expenses reflected in an attorney's hourly  
10 billing rate, and are not properly reimbursable." *Bakeell v. Astrue*, No. 3:10-cv-01525-JE, 2013  
11 WL 638892, at \*3 (D. Or. Jan. 9, 2013) (citing *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10  
12 (1989)). Given these deficiencies, plaintiff's request for attorney's fees and costs should be  
13 denied without prejudice to renewal upon an appropriate motion filed in compliance with Local  
14 Rules 292 and 293.

15 Accordingly, it is hereby RECOMMENDED that:

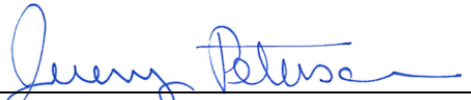
- 16 1. Plaintiff's motion for default judgment, ECF No.8, be granted in part and denied in  
17 part.
- 18 2. The court enter default judgment against defendant in the amount of \$2,000 in statutory  
19 damages.
- 20 3. Plaintiff's request for costs and attorney's fees be denied without prejudice to renewal  
21 upon a timely motion filed in compliance with Local Rule 292 and 293.

22 These findings and recommendations are submitted to the United States District Judge  
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of  
24 service of these findings and recommendations, any party may file written objections with the  
25 court and serve a copy on all parties. Any such document should be captioned "Objections to  
26 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed  
27 within fourteen days of service of the objections. The parties are advised that failure to file  
28 objections within the specified time may waive the right to appeal the District Court's order. *See*

1 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.  
2 1991).

3 IT IS SO ORDERED.

4  
5 Dated: November 15, 2024

  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE